

of possession. Leave to so amend was granted at the trial, terms as to costs being reserved. The jury found against the defence of leave and licence, and assessed the plaintiff's damages at \$1, for which a verdict was entered.

Held, that the original defence raised an issue of title, and it not having been amended until the trial, the plaintiff was obliged to go to trial in the High Court, and was entitled to his costs on the scale of that Court.

Semble, also, that as a matter of discretion under Rule 1130, and perhaps also as a term of allowing the amendment, the same disposition of the costs would be made.

B. N. Davis, for plaintiff. *Raney*, for defendant.

Street, J.]

LONG v. LONG.

[April 15.]

Trial—Notice of trial—Close of pleadings—Several defendants—Irregularity—Waiver—Delay.

A notice of trial is irregular unless the pleadings are closed as against all the defendants; and a defendant against whom the pleadings are closed when notice of trial is served by the plaintiffs can take advantage of the fact that the pleadings are not closed as against all the defendants, and have the notice of trial set aside, although the other defendants are content to accept it.

A defendant, by delaying the delivery of statement of defence till the last possible day, and by delaying a motion to set aside a notice of trial for six days after service thereof, does not waive an irregularity in the notice.

McBrady, K.C., *W. H. Blake*, K.C., *Harcourt*, and *Slaght*, for various parties.

Cartwright, Master in Chambers.]

[May 18.]

REX EX REL. MOORE v. HAMMILL.

Quo warranto—Mayor and town councillors—"Current expenditure"—Nature of loans for—Borrowing by outgoing council—Relator's motives—Affidavits as to—Costs.

A mayor and five councillors of a town having voted for borrowing money to meet the current expenditure for 1903 in excess of the amount authorized by s. 435 of the Municipal Act of 1903, and having had proceedings taken against them by a relator to unseat them, disclaimed, and a new election was held, at which the mayor and four of the old councillors, together with another, were elected by acclamation. The same relator then took further proceedings against the mayor and four old councillors on the same grounds to have them unseated again.